

May 17, 1990

Charles H. Bell, Jr.
Nielsen, Merksamer, Hodgson,
Parrinello & Mueller
770 L Street, Suite 800
Sacramento, CA 95814

Re: Request for Confirmation of Telephone Advice
Our File No. I-90-268

Dear Mr. Bell:

This is in response to your request for confirmation of telephone advice I gave to you on March 19, 1990. In your letter you also seek additional advice. Your request concerns the Political Reform Act's (the "Act") application to an organization's communication with its members and the effect of the preliminary injunction concerning such communications issued by the Court in Service Employees International Union, et al. v. Fair Political Practices Commission, U.S. District Court, Eastern District of California, Case No. CIVS 89-0433 LKK-JFM. ("SEIU case".) Since your letter does not identify a specific organization, we treat it as a request for informal assistance pursuant to Regulation 18329(c).

QUESTIONS

1. Are expenditures that are coordinated with a candidate and made by a sponsored political committee or broad based political committee for communications to members of its sponsoring organization subject to the Act's contribution limits?

2. A member of an organization, at the request of a candidate, makes an expenditure for a communication to the organization's members. The purpose of the communication is to rebut the organization's communication endorsing another candidate. Is the individual member's expenditure subject to the Act's contribution limits?

3. Do the Act's contribution limits apply if a membership organization, at the request of a candidate, makes an expenditure on a communication to its members that endorses the candidate and:

a. the communication asks for a contribution to the candidate and provides a return envelope, addressed to and paid for by the organization, for this purpose.

b. the communication asks for a contribution to the candidate and provides a return envelope, addressed to and paid for by the candidate, for this purpose?

c. the communication asks for a contribution to the candidate and provides for a return envelope, addressed to the candidate but paid for by the organization, for this purpose?

4. Do the Act's contribution limits apply if a membership organization or its sponsored committee, at the request of a candidate, makes an expenditure on a communication to its members which endorses the candidate and asks members to attend an organization-sponsored fundraiser for that candidate?

CONCLUSIONS

The Act limits the amount that an organization, including a committee, can contribute to candidates during a fiscal year. However, pursuant to a preliminary injunction issued in the SEIU case on May 19, 1989, the Commission was enjoined from enforcing the Act's contribution limits as they apply to communications between unions or membership organizations and their members. Based on this ruling, we offer the following response to your questions:

1. Expenditures that are coordinated with a candidate and made by a sponsored political committee or broad based political committee for communications to members of the committee's sponsoring organization are not subject to the Act's contribution limits.

2. Expenditures by an individual member of an organization at the request of a candidate remain subject to the Act's contribution limits even though they are made for a communication to organization members intended to rebut the organization's endorsement of another candidate.

3. Where a membership organization, at the request of a candidate, makes an expenditure for a communication to its members endorsing the candidate, and the communication also asks for a contribution to the candidate and provides for an envelope for this purpose that is either paid for by or addressed to the organization or the candidate, the organization's expenses in preparing or mailing the envelope are subject to the Act's contribution limits. The expenses of preparation and mailing the envelope are a provision of goods and services, rather than purely membership communications and thus do not come within the exception created by the SEIU case.

4. Expenditures by a membership organization or its sponsored committee, at the request of a candidate, for a communication to the organization's members endorsing the candidate and inviting members to attend an organization-sponsored fundraiser for the candidate are not subject to the Act's contribution limits.

ANALYSIS

Sections 85301 and 85303 limit the amount that organizations and committees may contribute to a candidate during a fiscal year. On May 19, 1989, the court in the SEIU case issued a preliminary injunction (copy enclosed), which among other things, enjoined the application of the Act's contribution limits to the extent they interfered with communications between unions or membership organizations and their members. For the purposes of applying this order, the Commission has considered a sponsored political committee or broad based political committee of a particular union or membership organization to be the same entity as its sponsoring organization.

Therefore, based upon the order and the Commission's interpretation of the order, a political committee or broad based political committee may coordinate with a candidate on expenditures for communications to members of the committee's sponsoring organization and the expenditures are not subject to the Act's contribution limits. Likewise, where, at the behest of a candidate, an organization makes an expenditure communicating its endorsement of the candidate to its members and inviting members to attend an organization-sponsored fundraiser for the candidate, such an expenditure is a membership communication that is not subject to the Act's contribution limits. Please note, however, that expenditures for both of the communications above remain contributions under the Act (see Section 82015 and Regulation 18215(b)) and are reportable as contributions.

We do not view the other activities described in your letter as "membership communications" subject to the Court's preliminary injunction. Specifically, where an individual member of an organization, at a candidate's behest, makes an expenditure to communicate with the organization's members, it is not a communication between the organization and its membership contemplated by the Court's order. Furthermore, the organization's mailing of envelopes in which members are asked to return contributions for the candidate is not a communication, but the provision of goods and services. When such a mailing is done at the candidate's behest, the portion of the organization's expenses relating to the purchase, mailing and printing of the envelopes is a contribution subject to the limits of the Act. Where such a mailing also contains communications to the organization's members, the increased cost of the mailing due to inclusion of the envelopes (in addition to the cost of printing and purchasing the envelopes) is the part of the expenditure that is subject to the Act's limits.

Should you have further questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel

By: Scott Hallabrin
Counsel, Legal Division

KED:SH:ld

Enclosure